No. 88-1905

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

EDDIE KELLER, *et al.*,

Petitioners,

—v.—

STATE BAR OF CALIFORNIA, *et al.*,

Respondents.

ON WRIT OF *CERTIORARI* TO THE CALIFORNIA SUPREME COURT

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE AMERICAN CIVIL LIBERTIES UNION IN SUPPORT OF PETITIONERS

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MOTION OF THE AMERICAN CIVIL LIBERTIES UNION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The American Civil Liberties Union (ACLU) respectfully moves for leave to file the annexed brief as *amicus curiae* in this case. Petitioners have consented to the filing of the brief; respondents have refused to give their consent.

The ACLU is a nationwide, nonpartisan organization with approximately 275,000 members dedicated to the principles of liberty and equality embodied in the Consti-

tution and civil rights laws. Since its founding nearly 70 years ago, the ACLU has been particularly concerned with any abridgement of First Amendment freedoms. The ACLU has, therefore, appeared before this Court in numerous First Amendment cases, both as direct counsel and as *amicus curiae*.

The issue before the Court is the extent to which lawyers in California can be compelled to subsidize ideological activities they do not support as a condition of practicing law within the state. Because that issue raises constitutional questions of fundamental importance to the ACLU, we respectfully seek leave to submit this *amicus curiae* brief for the Court's consideration.

Respectfully submitted,

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Dated: November 15, 1989

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INTEREST OF *AMICUS*

The interest of the ACLU is set forth in the accompanying motion for leave to file this *amicus curiae* brief.

STATEMENT OF THE CASE

This case began when 21 members of the California State Bar challenged the use of their mandatory dues to finance what they regard as political and ideological activities of the State Bar. As framed, the issue is a narrow one. Petitioners do not ask this Court to rule that integrated bars are *per se* unconstitutional. Nor do they challenge the use of their mandatory dues to support the State Bar's many non-ideological functions.

California established its integrated bar in 1927.[1] Like many bar associations around the country, it performs a variety of functions. *See generally*, Cal. Bus. & Prof. Code, §6000, *et seq.* Some of those functions involve explicitly delegated duties. For example, the California State Bar is empowered by statute to receive and investigate complaints of professional misconduct. §§6043 and 6076. It administers the annual bar examination. §6046. And it arbitrates fee disputes between lawyers and clients. §§6200-6206.

Other activities are not delineated by statute. Most significantly, the State Bar supports litigation and legislation through the filing of *amicus* briefs and the hiring of lobbyists. These efforts are undertaken pursuant to the State Bar's general mandate to "aid in all matters pertaining to the . . . administration of justice . . . ." §6031.

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[1] This description of the California State Bar is derived from the decision below. *Keller v. The State Bar of California*, 767 P.2d 1020, 1023-25 (1989).

The meaning of that mandate in specific contexts is determined by a Board of Governors, which ultimately decides what briefs to file and what legislation to support in the name of the State Bar.[2]

Upon reviewing this statutory scheme, the California Supreme Court declared that the State Bar was "a government agency" in all its aspects and, as such, "may use [its] dues for any purpose within its statutory authority." 767 P.2d at 1030. The court further concluded that the bar's statutory authority should "be read broadly" to include the expression of opinion on virtually any legal matter. *Id.* As explained by the majority below:

> Whatever the subject of the proposed law, it is likely that among the members of the State Bar are some with needed expertise, whose collective advice can lead to significant improvements in the legislative proposal.

Id.

Relying on this virtually boundless notion of legal expertise, the California Supreme Court rejected petitioners' claim that certain activities of the State Bar are so ideologically tinged, and so far afield from its core purpose, that they cannot be supported by mandatory dues. With regard to lobbying, in particular, the court noted:

> [E]ven if the proposed bill seems at first glance to relate entirely to substantive matters unrelated to the practice of law, the advice of expert practitioners could still be crucial.

[2] The Board of Governors consists of 22 members. Sixteen are elected by constituent groups within the State Bar. The remaining six are appointed by the Governor of California and approved by the State Senate. 767 P.2d at 1024.

Id. at 1031.

Given this broad approach, the California Supreme Court never considered any of the specific instances of allegedly ideological activity identified by petitioners, such as the use of mandatory bar dues to support a ballot initiative favoring a nuclear freeze. *See* Cert.Pet. at 3. Instead, the court held that a "bill-by-bill, case-by-case, review of bar lobbying and *amicus* briefs is unnecessary and unworkable." 767 P.2d at 1031.[3]

This Court has taken a different approach in the union and agency shop cases discussed more fully below. Moreover, as the California Supreme Court candidly acknowledged, "most of the cases from other jurisdictions which have addressed the subject of integrated bar dues have applied the labor union analogy to the bar." 767 P.2d at 1038 (and cases cited therein).

SUMMARY OF ARGUMENT

The principle that individuals may not be compelled to provide their financial support to ideological causes they do not share is deeply embedded in our nation's constitutional heritage. It is reflected in the writings of the framers and the holdings of this Court.

That principle is obviously not absolute. Government can and does impose its taxes without regard to whether every citizen endorses every program paid for by every tax dollar. But this Court has never confused the prerogatives of the state with the permissible author-

[3] The decision below does hold that the State Bar may not engage in election campaigning. 767 P.2d at 1032-33. So far as the California Supreme Court was concerned, however, that issue turned on the scope of the State Bar's statutory authority rather than the source of its financial support. *Id.*

ity of private associations supported by governmentally compelled contributions.

The issue has most often arisen in the context of union and agency shops, where this Court has consistently ruled that mandatory dues are only permissible if their use is "germane" to the union's core purpose of collective bargaining. *E.g.*, *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). There is no persuasive reason why mandatory bar dues should be treated any differently.

Certainly, the problem of compelled support for ideological causes does not disappear merely by designating the California State Bar a "government agency." It may well be true that, under California law, the bar is acting as an agent of the state when it regulates the admission and discipline of lawyers. But it seems equally plain that the State Bar's decision to file *amicus* briefs or lobby the Legislature cannot fairly be characterized as a government function.

This is not to suggest that the "free rider" principle articulated in *Abood* and elsewhere translates exactly to integrated bars. Integrated bars are not unions and they do not engage in collective bargaining on behalf of their members. Nevertheless, the broader lesson of the union cases is that any expenditure of mandatory dues must be closely related to the same compelling interests that initially justify their mandatory collection.

Judged by that standard, the decision below is fatally overbroad. For example, it would apparently permit the use of mandatory dues to pay for a brief by the State Bar on the continuing vitality of *Roe v. Wade*, 410 U.S. 113 (1973). While enormously important, that issue simply is not "germane" to the core purposes of an integrated bar, *see Lathrop v. Donohue*, 367 U.S. 820 (1961), and lawyers in California should not be compelled to support such activity on pain of losing their professional license.

We urge this Court to go no further in deciding this case. In particular, we express no opinion on whether mandatory dues can be used to support ideological activity that is more closely tied to the administration of justice -- like the advisability of a compulsory *pro bono* requirement -- or whether mandatory dues should instead be limited to the bar's self-policing function. This record does not present those questions clearly, and they should not be decided prematurely.

ARGUMENT

I. GOVERNMENT COMPELLED SUPPORT FOR IDEOLOGICAL CAUSES IS INCONSISTENT WITH CORE FIRST AMENDMENT VALUES

"[A]t the heart of the First Amendment is the notion that an individual should be free to believe as he will, and that in a free society one's beliefs should be shaped by his mind and his conscience rather than coerced by the State." *Abood v. Detroit Board of Education*, 431 U.S. 209, 234-35 (1977).

That principle lies deep within this nation's constitutional heritage. Thus, in *Abood*, this Court quoted with approval from James Madison's defense of religious liberty:

> Who does not see . . . [t]hat the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

Id. at 234 n.31. Thomas Jefferson agreed, writing that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical." *Id.*

This Court has never wavered from that view, which

is reflected in at least three distinct strands of modern constitutional law. Most fundamentally, this Court has consistently held that the right of free speech protected by the First Amendment implies a correlative right to refrain from speaking in compelled support of a state-ordained political or religious orthodoxy.

No one has expressed that principle more eloquently than Justice Jackson in *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943):

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.

Numerous other cases, however, make the same point. For example, *Torcaso v. Watkins*, 367 U.S. 488 (1961), holds that notaries public may not be required to affirm their belief in God. *Speiser v. Randall*, 357 U.S. 513 (1958), holds that a property tax exemption may not be conditioned on the taxypayer's willingness to declare his political loyalty. *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974), holds that a newspaper may not be compelled to print the reply of a political candidate who has been criticized in the newspaper's pages. And *Pacific Gas & Electric Co. v. Public Utilities Comm.*, 475 U.S. 1 (1986), holds that public utilities may not be forced to include opposing views on ratemaking issues in their billing envelopes.

The unifying theme in all these cases was aptly summarized in *Wooley v. Maynard*, 430 U.S. 705 (1977), when this Court struck down a New Hampshire statute requiring all noncommercial licenses to display the state slogan, "Live Free or Die."

> We begin with the proposition that the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all. A system which secures the right to proselytize religious, political, and ideological causes must also guarantee the concomitant right to decline to foster such concepts. The right to speak and the right to refrain from speaking are complementary components of the broader concept of "individual freedom of mind."

Id. at 714 (citations omitted).

The "broader concept" of individual freedom mentioned in *Wooley* is also reflected in this Court's recognition that the right of association guaranteed by the First Amendment is both a sword and a shield. On the one hand, the state may not prevent individuals from associating in pursuit of a common political goal. *E.g.*, *NAACP v. Alabama*, 357 U.S. 449 (1958). On the other hand, the state may not limit or prescribe the membership of political association. *Cf. Tashjian v. Republican Party*, 479 U.S. 208 (1986).

Finally, this Court has held in a series of cases dealing with union and agency shops that individuals may not be compelled to subsidize political causes they do not espouse. *See* Point II, *infra*. Political contributions combine elements of both speech, *see Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980), and association, *see Buckley v. Valeo*, 424 U.S. 1 (1976). And, like speech and association, political contributions are constitutionally protected in both an affirmative and negative sense. Accordingly, "[t]he fact that [petitioners] are compelled to make, rather than prohibited from making, contributions for political purposes works no less an infringement of their constitutional rights." *Abood*, 431 U.S. at 234 (footnote omitted).

II. A STATE-IMPOSED SYSTEM OF MANDATORY DUES MUST BE NARROWLY DRAWN TO SERVE A COMPELLING STATE INTEREST

The issue of mandatory dues is hardly a new one for this Court. To the contrary, the Court has considered the question at least six different times since 1956. Each of these cases arose in a union context, as the majority below is careful to point out. However, each of these cases also placed significant restraints on the manner in which mandatory dues can be spent. Those restraints reflect a sensitivity to constitutional values that is almost entirely missing from the decision below.

The earliest cases from this Court focused on a provision of the Railway Labor Act, which authorized negotiated union shops notwithstanding the contrary right-to-work laws of "any State." *See* 45 U.S.C. §152, Eleventh. This provision was subject to a facial challenge under the Commerce Clause in *Railway Employes' Dep't v. Hanson*, 351 U.S. 225 (1956). The Court rejected that challenge, stating: "The choice by the Congress of the union shop as a stabilizing force seems to us to be an allowable one." *Id.* at 233.

The Court nevertheless acknowledged that serious First Amendment problems might be presented by a more fully developed record.

> [I]f the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment, this judgment will not prejudice the decision in that case. For we pass narrowly on §2, Eleventh of the Railway Labor Act. We only hold that the requirement for financial support of the collective bargaining agency by all who receive the benefits of its work is within the power of Congress under the

> Commerce Clause . . . .

Id. at 238.

Five years later, in *International Association of Machinists v. Street*, 367 U.S. 740 (1961), a new set of plaintiffs came back to this Court claiming that compulsory union dues were in fact being used to subsidize political activity. The Court sustained plaintiffs' claim without ever reaching the First Amendment issue. Instead, the Court held that the use of mandatory dues for political purposes violated congressional intent. Specifically, the Court concluded that the union shop provisions of the Railway Labor Act were adopted by Congress "for the limited purpose of eliminating the problems created by the 'free rider,'" *id.* at 767, and that this "limited purpose" also determined the manner in which mandatory dues could be spent.

The dividing line articulated in *Street* was further refined in *Brotherhood of Clerks v. Allen*, 373 U.S. 113 (1963). The plaintiffs in that case challenged a series of union expenditures, including the use of mandatory dues to support the union's death benefit plan and its legislative lobbying program. Although the Court reached no final judgment on the propriety of these expenditures under the Railway Labor Act, it stressed that the "necessary predicate for [any remedy] is a division of the union's political expenditures from those germane to collective bargaining." *Id.* at 121.

The requirement that expenditures be "germane" to collective bargaining, if supported by mandatory dues, was constitutionalized in *Abood v. Detroit Board of Education*. The plaintiffs in *Abood* challenged a provision of Michigan law that authorized public employee unions to negotiate agency shop agreements. As in *Hanson*, the Court upheld the concept of an agency shop based on the "legislative assessment" that they make "an important contribution . . . to the system of labor relations . . . ."

431 U.S. at 222. But as in *Street* and *Allen*, the Court ruled that the underlying purposes of the agency shop also determined the use of mandatory dues.

In drawing this First Amendment line, the Court carefully noted that it was not restricting the union's political activities, but only the source of its funding. As the Court explained:

> We do not hold that a union cannot constitutionally spend funds for the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to its duties as collective bargaining representative. Rather, the Constitution requires only that such expenditures be financed from charges, dues, or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of governmental employment.

431 U.S. at 235-36 (footnote omitted).

Since *Abood*, the Court has returned to the issue of mandatory dues two additional times. In *Ellis v. Railway Clerks*, 466 U.S. 435, 453 (1984), the Court held, in part, that objecting employees could not be charged with the cost of any litigation unrelated to the bargaining unit. In *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 303 (1986), the Court stressed that any remedial scheme adopted in response to *Abood* "must be carefully tailored to minimize the infringement" of First Amendment rights.

In considering the issue of mandatory bar dues, the California Supreme Court did not even make a pretense of following *Abood*.[4] Instead, it concluded that *Abood*

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[4] Throughout the remainder of this brief, *Abood* is used as a shorthand reference to the entire line of cases from this Court dealing with the issue of mandatory dues. (continued...)

was legally irrelevant to the California State Bar, which it analogized to a government agency entitled to spend its funds on any and all activities within the general scope of its statutory mandate. 767 P.2d at 1030.

That judgment is inconsistent with the decision of every other court to address the question of mandatory bar dues after *Abood*.[5] It is also unpersuasive on its face. It may well be that the California State Bar acts as an agent of the state when it administers the bar examination and investigates complaints of professional misconduct. It clearly does not operate as an agent of the state when it files *amicus* briefs with the California courts or lobbies the California legislature on matters of importance to the legal profession.[6]

Contrary to the view of the California Supreme Court, this dual role does not make *Abood* less important; if anything, it makes it more important precisely because it increases the risk that the State Bar's mandatory dues will be used to fund its private political activities as well as its quasi-governmental functions.

Furthermore, to the extent that mandatory dues are used to fund the State Bar's political activities, those dues cannot be compared to the general tax revenues

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[4] (...continued)
hand reference to the entire line of cases from this Court dealing with the issue of mandatory dues.

[5] These decisions are collected in the dissenting opinion below. 765 P.2d at 1038-39.

[6] The divided nature of the State Bar is reflected in its Board of Governors. Six are political appointees; the remaining sixteen are elected by members of the bar. *See* n.2, *supra*. That ratio would be an unusual one, at best, if the State Bar were truly a government agency rather than a private association performing certain governmental functions.

collected and spent by most government agencies. As Justice Powell observed in his concurring opinion in *Abood*:

> Compelled support of a private association is fundamentally different than compelled support of government . . . [T]he reason for permitting the Government to compel the payment of taxes and to spend money on controversial projects is that the Government is representative of the people. The same cannot be said of a union, which is representative only of one segment of the population, with certain common interests. The withholding of financial support is fully protected as speech in this context.

431 U.S. at 259 n.13.

In urging application of the *Abood* standard to the facts of this case, we do not mean to suggest that the California State Bar or, for that matter, other integrated bars around the country, are the functional equivalent of trade unions. Obviously, there are both similarities and differences. In contrast to the California Supreme Court, however, we believe that the *Abood* test is fully capable of taking into account the public functions and broader purposes of the State Bar in determining the permissible use of mandatory dues. The mistake of the court below was in assuming that the bar's public functions are adequate justification for ignoring *Abood* entirely.

III. THE DECISION BELOW PERMITS EXPENDITURES THAT GO FAR BEYOND ANYTHING ALLOWED BY THIS COURT IN *ABOOD*

After *Abood*, a state-imposed system of mandatory dues is only permissible to the extent that it promotes an important state interest. Any benefit to the association's

political or ideological goals must be incidental and secondary. Conversely, the state may not play a role in compelling the payment of mandatory dues if the use of those dues primarily serves the association's political or ideological agenda. Otherwise, the state would be impinging on matters of individual conscience in violation of the First Amendment.

In the union context, this Court has identified two state interests that justify legislative support for a system of mandatory dues. First, the Court has deferred to legislative findings that union and agency shops help to promote industrial peace. Second, the Court has recognized that the so-called "free rider" problem raises issues of equality and fairness that the state has a legitimate interest in addressing.

Because the California Supreme Court eschewed reliance on *Abood*, it never sought to examine the state interests supporting an integrated bar nor the relationship of those interests to the use of mandatory bar dues. This Court, however, began that examination almost thirty years ago.

On the very same day that *Street* was decided, the Court rejected a broad constitutional challenge to Wisconsin's integrated bar in *Lathrop v. Donohue*, 367 U.S. 820 (1961). At the same time, the Court expressly reserved decision on the narrower question presented by this case: namely, whether mandatory dues may constitutionally be used to support the ideological activities of an integrated bar. *Id.* at 845.

In both method and result, the decision in *Lathrop* closely resembles the decision in *Hanson*, on which it heavily relies. Like *Hanson*, the decision in *Lathrop* begins by reciting the important state interests served by

an integrated bar.[7] And like *Hanson*, the decision in *Lathrop* ends by concluding that these important state interests can properly be financed through a state-imposed system of mandatory dues.[8]

The existence of this nexus, however, is central to both rulings. As Justice Brennan explained for the *Lathrop* plurality:

> We think that the Supreme Court of Wisconsin, in order to further the State's legitimate interests in raising the quality of professional services, may constitutionally require that the costs of improving the profession in this fashion should be shared by the subjects and beneficiaries of the regulatory program, the lawyers, even though the organization created to attain the objective also engages in some legislative activity.

367 U.S. at 843.

By distinguishing between the bar's "regulatory program" and its "legislative activity" *Lathrop* foreshadows *Abood*, just as *Hanson* and *Street* did in the union context. Certainly, nothing in *Lathrop* is inconsistent with *Abood*'s holding that a private association may not use state-imposed dues to coerce the support of dissenting members for political or ideological goals which they do not share, and in which the state itself has no direct interest.[9]

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[7] These activities included the handling of grievances, legal training, and public education. *Lathrop*, 367 U.S. at 839-42.

[8] The majority below refers to Justice Harlan's concurring opinion in *Lathrop* as support for the proposition that the activities of an integrated bar can be compared to the activities of a state commission. 767 P.2d at 1029 n.16. But in expressing those views, Justice Harlan spoke only for himself and Justice Frankfurter. 367 U.S. at 848.

[9] So long as it adheres to *Abood*, the State Bar is free to advocate (continued...)

We recognize that this principle is more easily stated than applied, particularly when dealing with the multifaceted activities of modern bar associations. Some lines, however, are clearer than others. Thus, it seems reasonably plain that the self-policing functions of the State Bar can be supported by mandatory dues. In the words of *Lathrop*, all lawyers are "subjects and beneficiaries" of programs designed to improve the quality of the legal profession. At the very least, this category would seem to include money spent on administering the bar examination and investigating claims of professional misconduct. It very likely includes the cost of continuing legal education, as well.

Bar activities designed to improve the administration of justice present a closer question in our view. On the one hand, they do not clearly pose the "free rider" problem that this Court has deemed so important in its other decisions. On the other hand, society-at-large has a special interest in the educated opinion of the legal profession on issues that touch their daily professional lives.

When confronted with similarly close questions in the past, this Court has proceeded cautiously. *E.g.*, *Hanson*, 351 U.S. at 238. We urge this Court to do so again. Specifically, we do not believe this case clearly presents the issue of whether mandatory dues can be used to subsidize the State Bar's position on such questions as the reform of court rules and increased compensation for judges. Nor do we think it is necessary for

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[9] (...continued)
whatever ideological cause it chooses in whatever forum it deems most advantageous. The *Abood* restriction is, therefore, a limited one. Specifically, the application of *Abood* to the facts of this case would "not require the [State Bar] to 'abandon or alter' any activities that are protected by the First Amendment." *New York State Club Ass'n v. City of New York*, 487 U.S. ___, 108 S.Ct. 2225, 2234 (1988).

this Court to reach those difficult questions in order to reverse the decision below.

By its own admission, the California Supreme Court has conferred upon the State Bar the broadest possible authority to use the mandatory dues it collects from every lawyer in the state for almost any purpose it chooses, so long as that purpose is vaguely related to "law." The only apparent exception to this virtual *carte blanche* is election campaigning, which is forbidden by the decision below regardless of its funding source. Short of that single limitation, the State Bar is free to use its mandatory dues to file an *amicus* brief in *any* case or lobby the legislature on *any* issue supported by a majority of its members.

Thus, for example, the decision below would allow the State Bar to use its mandatory dues to finance a lobbying effort in support of medicaid funding for abortion, or in favor of a constitutional amendment to reverse this Court's decision in *Texas v. Johnson*, 491 U.S. ___, 109 S.Ct. 2533 (1989). Those issues have obvious public import and lawyers undoubtedly have much to contribute to the public debate. But so do many other groups in society.

What the decision below fails to explain is why the state's interest with regard to lawyers is any greater than the state's interest in compelling all doctors to support the AMA's views on abortion, or compelling all veterans to support the VFW's views on a flagburning amendment. All of these are intensely political questions that, under the First Amendment, must be left to the individual conscience.[10]

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[10] The First Amendment violation would be obvious if petitioners were barred from practicing law in California because of their unpopular political views. *Cf. Branti v. Finkel*, 445 U.S. 507 (1980); *Elrod v. Burns*, 427 U.S. 347 (1976); *Keyishian v. Board of Regents*, 385 U.S. (continued...)

Put in the terms of *Abood*, the critical error by the court below was in assuming that any subject on which lawyers have expertise is germane to the purposes of an integrated bar and may therefore be supported through mandatory dues. This Court has never interpreted *Abood* so broadly. To the contrary, this Court never even mentioned the issue of expertise when it ruled, in *Ellis*, that dissenting union members could not be compelled to subsidize either a general organizing drive or union litigation that did not directly relate to the collective bargining unit. 466 U.S. at 452-53.

Justice O'Connor's concurring opinion in *Roberts v. United States Jaycees*, 468 U.S. 609, 638 (1984), sets forth a reasonable summary of the controlling constitutional principle:

> [A] State may compel association for the commercial purposes of engaging in collective bargaining, administering labor contracts, and adjusting employment-related grievances, but it may not infringe on associational rights involving ideological or political associations.

Because the decision below loses sight of this principle, it must be reversed for further proceedings consistent with *Abood* and the cases that follow it.

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[10] (...continued)
589 (1967). The decision below uses the indirect means of compelled financial support to produce a constitutionally indistinguishable result.

CONCLUSION

For the reasons stated herein, the judgment below should be reversed.

Respectfully submitted,

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